# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

## No. 155.

MARIA MARGARITA VOLCEY SOUFFRONT ET AL.,
PLAINTIFFS IN ERROR,

*vs.*

LA COMPAGNIE DES SUCRERIES DE PORTO RICO ET AL., DEFENDANTS IN ERROR.

TRANSLATION OF A PORTION OF THE OPINION OF THE SUPREME COURT OF PORTO RICO IN THE CASE OF PETRONA DEL CARMEN GONZALEZ, APPELLANT, *VS.* MANUEL MENDEZ RODRIGUEZ ET AL., APPELLEES.

**PRESENTED AS SUPPLEMENTAL TO THE BRIEF OF DEFENDANTS IN ERROR.**

(*Translation.*)

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First. If there is any presumption and exception of case adjudicated (*cosa juzgada—res adjudicata*) alleged by all the defendants in answer to the complaint.

Second. If Petrona Resto may be considered, judicially speaking, as the natural mother of the present plaintiff, Petrona del Carmen González.

Third. If as the natural mother she had at times the guardianship of her minor daughter.

Fourth. If the deed of June 19, 1896, is void, Don Jacinto Gómez having concurred in its execution merely as a partner in the commercial house, he being appointed executor by Don Domingo González in his will.

Fifth. If there appears in the register of property of Humacao the cause of annulment from lack of legal capacity on the part of the minor and her mother to enter into a contract, and consequently, in affirmative case, if the mortgage obligations (obligaciones hypotecarias) are set aside which were placed by Gómez, Méndez & Co. upon various properties in favor of the American Colonial Bank and the Sucesores de L. Villamil & Co. by deeds of August 3, 1901, May 12, 1903, and June 23, 1905, and in which mortgaged properties (fincas hypotecadas) Doña Petrona del Carmen González had a share, and which passed to the ownership of the firm Méndez, Gómez & Co. by virtue of the cession of rights and shares set forth in the deed of June 19, 1896.

We will consider first the question of presumption and exception of case adjudicated, which, as said above, was duly alleged by all the defendants.

It is necessary to state, for greater clearness in argument, that the present plaintiff is the same as the one in the preceding suit.

In the first trial, which was settled by final judgment, the deed of June 19, 1896, was set aside on the ground that the mother, the guardian, could not alienate the real property of her daughter except for justifiable reasons of expediency or necessity, and after having obtained authorization from the judge having jurisdiction, with the consent of the fiscal, requirements which were utterly disregarded by the mother of the minor, the contracting party in said deed.

Let it be noted that article 164 of the old Civil Code, which provides as above set forth, is found in chapter 3d treating "of the effects of guardianship in respect to the property of the children."

So that in proceeding as the plaintiff did proceed, praying that the deed be set aside solely because of non-fulfillment of judicial requirements, and non-compliance with procedure already named, she acknowledged the guardianship of her mother, forasmuch as there is equivalent thereto the acknowledgment made by her husband, Don Delfin Sierra Cuesta, who, in the first suit, was the legal representative of the minor as *guardian ad litem* appointed by the court.

So that now the capacity of the mother, Doña Petrona Resto Negron, is attacked and denied, which was then—that is, in the first suit—acknowledged explicitly and decidedly.

Now, in this suit it is again asked to set aside the deed of June 19, 1896, on the ground that the mother never had the guardianship of her daughter, and consequently could not exercise it or make a contract upon the property of the minor, who, as emancipated, required a guardian appointed by the court, with all legal formalities, to act for the said minor, now of age, Doña Petrona del Carmen González.

This reason now alleged for annulment, as well as the one relative to Don Jacinto Gómez, the executor, if they exist now, existed when the plaintiff instituted her first suit, but, nevertheless, she did not advance them then, but only founded her claim upon what she believed was covered by article 164 of the old Civil Code.

But let us see whether there really is or is not presumption of case adjudicated.

Don Jaoquin Esriche in his dictionary defines case adjudicated, saying that it is:

> "What has been decided in a trial by a valid decree from which there is and can be no appeal, either because the appeal is not admissible, or because the judgment has been accepted, either because the ap-

peal was not interposed within the period prescribed by law, or having been interposed, was denied."

And he goes on to say:

"The case adjudicated is presumed rightfully adjudicated, and the law makes it irrevocable, not allowing the parties to prove the contrary, because otherwise the suits would never have an end" (Law 19*a*, title 22, part 3*a*).

Hence comes the maxim of Roman law, "*Res judicata pro verita habetur.*"

The respect with which the law vests the case adjudicated has for its object the preservation of public peace.

It has been suitably regulated, and now it is easier to discover when all the elements concur therein.

Article 1219 of the Civil Code in force says:

"* * * In order that the presumption of *res adjudicata* may be valid in another suit, it is necessary that between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants and their capacity as such. * * *

"It is understood that there is identity of persons whenever the litigants of the second suit are legal representatives of those who litigated in the preceding suit, or when they are jointly bound with them or by their relations established by the indivisibility of presentations among those having the right to demand them, or the obligation to satisfy the same."

The Supreme Court of Spain, interpreting article 1252 of the old Civil Code, which is the same as 1219 of the one in force, has set forth the following doctrine in its decision of November 18, 1903:

"Presumption of case adjudicated exists when among the litigants in the preceding and the present suit there is the joint relationship which gives both parties to the suit the same reasons for bringing suit,

to invoke the same bases, and rest the claim on allegations that make identical the condition of the parties and the result desired in relation to the title invoked, although it be attempted, as in the present case, to establish some shade of difference in the accidents of personality of the defendant; because in such case what is of more importance than distinct actions would be new allegations which occur to the parties to contest a judgment after its execution, and would result in contradicting what has already been decreed and decided, violating the laws and fundamental doctrines established upon the efficacy and unchangeableness of the case adjudicated."

The question may arise that in this suit the parties defendant are not identically the same as in the preceding one, forasmuch as in the latter they were all those who executed the deed of June 19, 1896, asked to be set aside.

But it must be borne in mind that in the two trials the mercantile firm, purchaser of the shares and hereditary rights of the vendor, Doña Patrona González, was a party, and those purchasers are the ones exclusively affected by the validity or annulment of the aforesaid deed.

Moreover, said deed is not voided by the fact that in the second suit one of the defendants in the first is not a party thereto (Decision of the Supreme Court of Spain, May 5, 1900). Therefore in this case there is perfect identity of persons in both litigations, and the capacity is likewise identical of plaintiff and defendants.

It is true that other parties are now brought in as defendants, the American Colonial Bank and the Sucesores de L. Villamil & Co., but these are mortgagees of the mortgaging firm, defendant here, and they are consequently jointly associated in the mortgages executed upon the properties in litigation.

This new and subsequent accident cannot destroy the legal identity explained in article 1219 of the Civil Code in force and inserted above.

There is likewise identity of things, forasmuch as in the first suit it was prayed as essential finality that the hereditary property be recovered as a result of the invalidity of the aforesaid deed, and in this suit precisely the same petition is made

There remains to consider whether there is identity of cause or of action as was said in the old law.

We must not lose sight of the fact that in both litigations prayer was made to set aside the deed of June 19, 1896, and only the reasons vary for asking therefor. In this difference it appears that the appellant relied principally upon the denial of the exception of case adjudicated.

The following question was submitted to the Supreme Court of Spain:

In both suits question arose as to the validity of a document: "Will the presumption of case adjudicated be of no effect because in the second suit reasons were advanced for annulment distinct from those that were the subject of argument in the first, the object of the parties in both suits being to determine who was the owner of certain property?"

The case in question is analogous, and the Supreme Court of Spain in its ruling of March 14, 1898, established the following doctrine:

> "* * * that even when it is evident that in the present suit the reasons for voiding attributed to the title on which Don Casimiro Rodriguez founded his action for recovery, were not invoked in the previous one, it is no less evident that the opinion formed then of its validity in order to grant the recovery sought cannot but affect the conditions thereof, since if neither the trial court nor the Supreme Court had to take any into account in deciding the appeal to the court of cassation, because the parties did not deem it expedient to plead them, just as the point in the suit of 1887 was settled, and bearing in mind not only the proposed exception but the nature of the action in process, according to which the principal was compelled to prove the ownership claimed, it is forced

to acknowledge that in finding it justifiable, the court rendered definite and final decision upon the legal efficiency of the adjudications which Don Braulio García Vaquero made for the purposes of the recovery prayed for; for in the respective trials the litigants must utilize every means of defense to avoid confusions and uncertainty, which would arise if the various reasons that might be suggested to the parties in contesting a judgment after trial were not considered as independent actions, while it is unquestionable that when the point was argued in 1887 as to the validity of title of ownership submitted with the petition the causes or reasons for setting aside now alleged were already known.

"Whereas, granted that the Audiencia of Valladolid, in finding the exception of case adjudicated as the main ground for final judgment, has not been guilty of the errors alleged in reasons 3d, 4th, and 5th of the appeal, inasmuch as the main purpose of the parties in both suits consisted in determining who is the owner of certain properties inherited from Doña Maria de la Devosa, decided in the suit of 1887 as the property of Don Casimiro Rodriguez, and there cannot now be made herein—without violating the same laws and doctrines relative to the case adjudicated, cited in said reasons—any declaration contradicting the final decree by new legal reasons that were not duly alleged."

In another judgment of January 15, 1901, the question was submitted to the same court that if annulment of a loan instrument is denied on the ground of not having previously obtained annulment of the judicial authorization which was asked in order to contract the loan, will the judgment create the exception of case adjudicated in the new suit instituted upon annulment of that authorization of the loan instrument and the trial resulting?

The Supreme Court decided in the affirmative, sustaining the existence of the exception of the suit adjudicated.

The defendant firm, Gómez, Mendez & Co., which bought from the plaintiff the shares and rights held by the latter

in the old firm, of which her father, Don Domingo González, was a member, did so by virtue of a title which they believed legitimate, and this notwithstanding they ran the risk of suit, and they logically thought that if they won this suit their title would be unassailable by the plaintiff, for they supposed, with reason, that she had alleged whatever she had to allege against the said title, and thus Gómez, Mendez & Co. defended themselves and secured a judgment in their favor on the 31st of March, 1905, one which was final, because, although the plaintiff entered a plea for reversal in the Supreme Court of the United States, it was denied and the record returned with the judgment for due execution.

Therefore Gómez, Mendez & Co. believed they could rest in the efficacy of their title and could freely make the disposition of that property in the course of their business they desired without the plaintiff being able to disturb it by contesting the efficacy of the same title by new reasons, but which have the same object, and that, knowing them, she might have alleged in the first suit.

This cannot be allowed, for a stable and serious condition of law never would be constituted, as the party who obtained a final judgment in his favor would be intangled often in as many other suits as there were reasons for pleading that might occur to a fertile imagination, and which, though distinct, were known upon instituting the first suit.

To allow this, confusion and unnecessary expenses would fall upon third parties, as happens in the present case, which brings into the suit the American Colonial Bank and the Sucesores de L. Villamil & Co., who, subsequent to the preceding suit and the final judgment which ended it, had entered into a contract with Gómez, Mendez & Co. to loan money on certain properties which are the bases of the real and final claim in both suits.

There exists then the alleged presumption and exception of case adjudicated, and therefore the judgment is confirmed, with the costs of appeal to be paid by the appellant.

and in view of the fact that the case is decided on the main issue it is unnecessary to consider the other questions alleged in the written plea submitted to this court.

JOSÉ MA. FIGUERAS,
*Associate.*

## Decision.

SAN JUAN, PORTO RICO, *November* 19, 1909.

This court has carefully reviewed the transcript of the documents submitted for the purpose of appeal interposed in the aforesaid case, and has duly considered the allegations of the litigants in support of their respective claims, and for the reasons assigned in the ruling of the court attached to this decision it resolves to confirm, as it hereby does confirm, the judgment of the District Court of the Judicial District of Humacao of April 30, 1909, and hereby orders that the case be remanded to said court for its execution.

We thus declare, order and sign.

JOSÉ C. HERNANDEZ.
JOSÉ MA. FIGUERAS.
J. H. MACLEARY.
ADOLPH G. WOLF.